

Cundy's Harbor Working Waterfront Study

Village Profile and Policy Options



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Prepared by:

Hugh Coxé
New England Planning Concepts
117 West Main Street, Yarmouth, ME 04096
(207) 847-9299 / hcoxe@maine.rr.com

Theresa Oleksiw, AICP
Planning Consultant
71 Main Street, Topsham, ME 04086
(207) 725-2989 / abbyc@gwi.net

Judy Colby-George
Spatial Alternatives
117 West Main Street, Yarmouth, ME 04096
(207) 846-2355 / jcg@spatialalternatives.com

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Table of Contents

Executive Summary	1
Introduction	3
Profile of the Village	5
Cundy’s Harbor Village Study Area.....	5
Methodology for Developing the Village Profile.....	6
Findings – Village Profile	6
Current land and marine uses and water access in Cundy’s Harbor	7
Analysis of the critical marine infrastructure	8
Overview of current land use regulations.....	13
Preserving Cundy’s Harbor’s Working Waterfront	16
Issues and Challenges to Cundy’s Harbor	16
Issues and Challenges Common to Maine Waterfronts	20
Assessment of Current Policies and Regulations.....	20
Options – Policies, Regulations and Investments	23
Ordinances and Policies from Other Towns.....	23
Other Options.....	26
Evaluation of the Options for Cundy’s Harbor.....	27
Public Participation and Feedback	32
Conclusion	34
Findings.....	34
Recommendations.....	35
References	37
Appendix	38

Executive Summary

This study provides a profile of the Cundy's Harbor village and its working waterfront. It also sets out some strategies for protecting the character and vitality of Cundy's Harbor's working waterfront and for addressing some of the challenges facing working waterfronts.

Cundy's Harbor, a village of the Town of Harpswell, Maine, is an area of about 190 acres with just under 10 percent of that area dedicated to marine related uses. Over 40 percent of the land in the study area has access to the shore and although most of that land is zoned as a commercial fishing district, only a little over ten percent of that land is used for commercial fishing access. Water access is considered to be the most important factor in sustaining the fishing industry. Cundy's Harbor has only one public access point - a small public boat ramp, but has nine or so larger commercial wharves that provide much of the access for commercial fishermen. Some individual commercial fishing access also is enjoyed by owners of relatively small waterfront lots.

Access is subject to several threats including the sale of the waterfront lots to non-fishing owners, conversion of larger wharves to non-commercial marine uses, disputes over legal access rights, and revocation of permission for access. Cundy's Harbor has been fortunate, experiencing little loss of water access over the last decade. Nevertheless the residents and users of Cundy's Harbor are aware that loss of water access is occurring up and down the Maine coast and they perceive that there is little to prevent the same thing from happening in Cundy's Harbor.

Other challenges to the vitality of Cundy's Harbor working waterfront include escalating waterfront land values, rising assessment values resulting in increases in property taxes, conflicts with non-fishing people over impacts from fishing, environmental degradation of harbor waters, and competition with recreational boaters for harbor space, moorings, docking facilities and parking. Likewise there is a need to retain adequate space on land to store fishing gear and boats and to maintain convenient access to basic fishing related goods and services.

This study found that, compared to many other coastal communities, Harpswell has some relatively strong land use regulations for the protection of its working waterfronts, such as exclusive zoning for commercial fishing. Nevertheless, some provisions of the zoning regulations may permit uses that could be detrimental to the continued vitality of Cundy's Harbor's working waterfront. This report offers an assessment of the effectiveness of the town's policies and ordinances for protecting the working waterfront and makes recommendations for additional restrictions on new non-marine related uses within commercial fishing zones, revisions to commercial fishing zone boundaries, and clarification of some ordinance language. This study also considered and recommends non-regulatory options for protecting the working waterfront such as education about commercial fishing and working waterfronts, support for tax policy changes, and investments in the waterfront.

As part of the study, over three dozen residents participated in a public forum to discuss the study's initial findings and to provide their input. Most participants endorsed the concept of protecting Cundy's Harbor working waterfront and want the village to remain as it is to the

greatest extent possible. Many in attendance were concerned about the potential for conflicts between commercial fishermen and non-fisherman and supported developing a brochure describing the culture, activities and sensory experiences of a working waterfront. Most also felt there should be further consideration for improved public access to the water, exploration of funding sources for waterfront infrastructure improvements, an effort to address property tax relief for waterfront properties, and further review of zoning ordinances.

This report concludes that “Cundy’s Harbor has a strong commercial fishing culture and strong public support for maintaining that culture and preserving the infrastructure that supports commercial fishing.” It notes that while Cundy’s Harbor has had relatively little recent change, that is not an indication loss of access or conflicts between fisherman and residents will not become problems in Cundy’s Harbor as they have in other working waterfronts. The report therefore recommends generally that the citizens of Cundy’s Harbor plan for the continued vitality of the working waterfront by further exploring the options set out in this report. The report also specifically recommends that the community take the following actions:

- Include stronger working waterfront policies and strategies in the town’s comprehensive plan update.
- Develop a brochure or other educational material on fishing villages.
- Discuss this report with residents and users of Cundy’s Harbor.
- Analyze the benefits and impacts of land use options and decide which, if any, to implement.
- Review and possibly revise the zoning boundaries for the commercial fisheries districts.
- Work with other coastal communities to have coastal marine related property assessed at current use value.
- Engage in discussion about the need and desire for improved or additional public access and for a dedicated fund for investments in the waterfront.

Though much of the challenge to Cundy’s Harbor comes from influences that are beyond the control of the town and its policies, local efforts such as those recommended in this report, can play a vital role in preserving the working waterfront.



Cundy's Harbor from Field Road, Summer 2004

Introduction

During the current update of its Comprehensive plan, the town of Harpswell determined that development pressures and changing demographics are threatening the town's traditional working waterfronts. To address this threat, the town formulated a strategy for its waterfront villages to plan for the protection of their working waterfronts. The process envisioned by the town calls for a village by village planning effort resulting in a profile of the village and an evaluation of possible changes in zoning, ordinances and town policies. The town chose to begin with Cundy's Harbor, as it is one of the most recognizable working waterfronts in Harpswell.

The central goal of this study of Cundy's Harbor is to develop an approach for protecting the character and vitality of the Cundy's Harbor's working waterfront while addressing the challenges presented by demographic changes and increased demand for residential growth. Additionally the town would like the Cundy's Harbor study to serve as a model for future village planning efforts in Harpswell and possibly elsewhere in the state.

The community organized a volunteer advisory group made up of Cundy's Harbor citizens to guide this effort. The advisory group worked with the residents and users of Cundy's Harbor, along with planning consultants and the town's planner, to develop a profile of the current village and waterfront and to draft a list of options for protecting Cundy's Harbor. These options include potential ordinance changes and policy considerations that might be implemented by the town to help achieve the goal of protecting the working waterfront and village. The advisory group and the planning consultants presented the village profile and a variety of options for consideration to a community forum in September 2004.



Hawke's Wharf, Summer 2004

The September 2004 community forum was designed to elicit feedback from the citizens in attendance through small group discussions. Their ideas and comments are recorded and are summarized in this report. This feedback provides the basis for many of the conclusions and recommendations that appear in this report.

One of the guiding principles of this process is that community planning relies on citizen input. While the scope of this project, both in terms of timeframe and cost, did not allow for substantial public participation, input from selected town citizens was critical to ensuring

that the profile of Cundy's Harbor draws on local knowledge and is consistent with citizen interests. Knowledgeable individuals such as fishermen, business owners, and other residents in Cundy's Harbor were contacted for the purpose of gathering local information to assist with the development of an inventory of land uses, marine related uses and water access sites. These individuals were also asked to discuss the challenges to preserving the Cundy's Harbor working waterfront and the critical needs of the fishing industry and marine related businesses in the village.

This report provides a detailed inventory and identifies the most important and pressing issues facing the Cundy's Harbor working waterfront. It also identifies and evaluates a variety of options for addressing some of those challenges. Though the report makes some recommendations for specific policy actions, it really is intended to be a base to begin generating a plan for the future land and marine uses in Cundy's Harbor. It recommends that the citizens of Cundy's Harbor and all of Harpswell proceed with such a planning effort.

The majority of the citizens of Cundy's Harbor who spoke, either through interviews or through the community forum, supports preserving Cundy's Harbor as a working waterfront. Nearly all the citizens who participated would like to see the marine related uses, the water access, the types and numbers of fishing operations and the character of the village remain the same as much as possible. To the extent commercial fishing operations may be in conflict with residential or other uses, most people felt that the residents and users of Cundy's Harbor should defer to the fishing industry needs. But while that broad goal seems to be commonly shared, the specifics of how to achieve that goal will need further exploration. This report provides several options that the community may want to consider for achieving its goal.

It is the hope of the advisory group that this report and the process underlying this report catalyze the important work of planning for the future vitality of Cundy's Harbor and its working waterfront.

Profile of the Village

The profile of the Cundy's Harbor village includes an inventory of land uses, marine related uses, and water access sites within the study area. It also includes an analysis of critical marine related infrastructure and an overview of the current land use regulations and policies applicable to the village and the working waterfront.

The data collected from this inventory are in several forms. Maps were developed using Geographic Information Systems (GIS) software and data. Paper copies of the various maps appear in Appendix A, and digital copies of the data and the maps have been provided to the Town of Harpswell on compact disc (CD). Digital photographs were taken of all marine-related uses and many of the water access sites in the village. Copies of the photos appear in Appendix B, and copies of the digital photos have been provided to the Town of Harpswell on CD. Additionally, land use data was gathered for each parcel within the village study area and recorded on spread sheets, copies of which are attached in Appendix C. Digital copies of that data have also been provided to the town on CD.

Cundy's Harbor Village Study Area

The area of Cundy's Harbor included in this study consists generally of the land and harbor area north of Cundy's Point and south of Rands Road. This includes parcels served by Field Road, Holbrook Street, and Prosser Road. To the west the study area includes those parcels of land served by Longley Drive, Oakhurst Island Road and Taylor Road. See figure 1, Map of Cundy's Harbor Study Area. A larger map depicting the Cundy's Harbor study area is attached as Map 1 in Appendix A.

In order to delineate the village boundaries, we were asked to develop a set of criteria for defining the geographic extent of Cundy's Harbor village based on planning principles and input from town officials and local citizens. The boundaries are primarily for the purpose of defining a study area that is relevant to the concept of Cundy's Harbor village. The boundaries selected represent a consensus of those we consulted but should not be viewed as a consensus of all the residents of Cundy's Harbor.

Finally, the boundaries are not intended to create a jurisdiction or an area in which special rules apply. Though that may ultimately be one of the outcomes of future working waterfront planning efforts, the boundaries set out in this study are simply for restricting the geographic scope of the study to a reasonably manageable and relevant area.

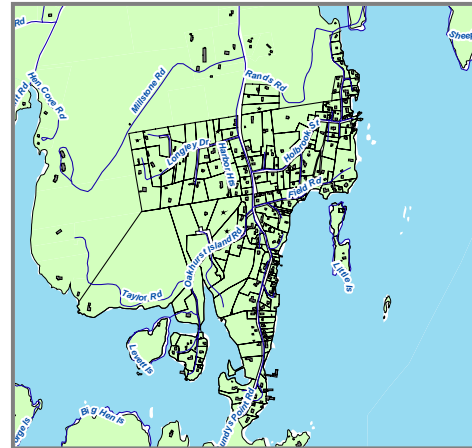


Figure 1, Cundy's Harbor Study Area

The criteria used for defining the Cundy's Harbor village boundaries are based on the land use pattern and the historical cultural notion of what constitutes the village. The factors considered include:

- Proximity and accessibility to village core
- Density of residential dwelling units
- Presence of commercial and civic buildings and spaces (such as library, stores, church)
- Natural features such as the hill on Cundy's Harbor road, the narrowing of the land at the inlet and southern part of the village, etc.
- Traditional historical definition of village limits
- Location of residences of people who say they live in Cundy's Harbor

Input from town officials and several local citizens suggests most people felt that the traditional historical definition of village limits and the pattern of density are the most important factors in determining the boundaries of the village.

Methodology for Developing the Village Profile

The inventory of land uses, marine related uses, and water access sites are based on the town's parcel maps, existing town data, and aerial photographs. To the extent land uses for given parcels could not be identified or categorized from the existing information, we conducted on-site field work and inquiries of knowledgeable residents to determine the use. On-site visits were made to all marine related uses and water access sites. Where possible, we took digital photographs of marine related sites and water access sites. Maps were created depicting land use types and marine related parcels using GIS from the data collected.

Additionally, the village profile identifies the infrastructure necessary to meet the needs of the fishing industry and related marine businesses in the village. These needs were ascertained through consultations with town officials and local citizens, review of the town's Comprehensive Plan, and a review of several reports pertaining to working waterfronts including the 1999 report *Town of Harpswell Fishing Industry Profile*. The village profile also provides an overview of current land use policies and regulations based on a review of the current Shoreland Zoning, Basic Land Use, and Harbor and Waterfront ordinances as well as the 1993 Comprehensive Plan.

Findings – Village Profile

The profile of the Cundy's Harbor village is divided into three sections: 1) an inventory of land uses, marine related uses, and water access sites within the study area; 2) an analysis of critical marine related infrastructure; and 3) an overview of the current land use regulations and policies applicable to the village and the working waterfront.

Current land and marine uses and water access in Cundy's Harbor

Land Use

The Cundy's Harbor study area is made up of about 200 parcels¹ and is a total area of almost 190 acres. Of those parcels, about 13 support commercial uses and another 15 support a mix of some commercial use and residential use. Typically these mixed parcels have a small marine related operation – in several instances a dock and some commercial fishing – and also a house where the property owner resides. Combined, these parcels that support commercial uses make up about 15 percent of the total parcels in the Cundy's Harbor study area.

There are 147 parcels (almost 75 percent of all parcels in the study area) designated as residential. Of these about 99 parcels (50 percent of all parcels) are owned by Harpswell residents. Town data does not indicate whether the homes on these parcels are owner occupied but local knowledge supports the presumption that almost all of these are either owner occupied or occupied by family of the local owner. Another 48 parcels, or 24 percent of the total, are under non-local ownership. These include seasonal homes and rental properties. Another 16 parcels are classified as “open land”, meaning land with no building, six are classified as public, meaning town owned (library, fire station and town landing) or part of the Cundy's Harbor Church property, and three are designated as “common” – land owned in common by a homeowners association. A map depicting the Cundy's Harbor land uses is attached as Map 2 in Appendix A.

Land Use Type	# of Parcels	% total parcels	Acreage (approx.)	% total acre (approx)
General Land Use				
Commercial	13	7%	4	2%
Mixed	15	8%	13	7%
Residential	147	74%	152	80%
<i>Local</i>	99	50%		
<i>Non-local</i>	48	24%		
Open land	16	8%	14	7%
Public/ Common	9	5%	7	4%
Total	200	100%	190	100%
Marine Related				
Inland	6	3%	7.2	4%
CF1	23	11%	9.2	5%
CF2	1	1%	0.2	0%
Total	30	15%	16.5	9%
Water Access/ Docking Space				
Water Access	76	38%	82	43%
<i>Public water access</i>	2	1%		
Docks	30	39%	% values for docks is % of all parcels with water access	
<i>Commercial docks</i>	19	25%		
Prvt use comm docks	10	13%		
Multi user comm docks	9	12%		

Table 1. Land uses, marine uses, and water access

¹ A precise count of the number of parcels is difficult because several parcels appear to have the same maplot number and owner designation despite appearing as separate parcels on the town's parcel map.

Marine Related Uses

For purposes of this study “marine related use” is defined as a use directly or indirectly relating to commercial activities that depend on coastal waters or shore. There are about 30 marine related parcels in the Cundy’s Harbor study area. These account for about 16 percent of all parcels in the study area and about nine percent of the total study area acreage. Twenty-three of the marine related parcels are in the Commercial Fisheries 1 (CF1) zoning district and one is in the Commercial Fisheries 2 (CF2) district.² Six of the parcels are in the Interior zone. All six of those inland parcels, as well as the one parcel from the CF2 district and two from the CF1 district, provide marine related services (such as storage, parking, repairs and one restaurant) without providing water access. The remaining 21 marine related parcels have water access. A map depicting the Cundy’s Harbor marine related uses is attached as Map 3 in Appendix A.

Water Access

Seventy-six parcels in the study area have frontage along the shoreline and therefore have some form of water access. These include approximately 30 parcels with docks. Approximately 19 of those docks are primarily used for commercial operations and about nine of those regularly serve fishermen other than the owner by providing access, docking space, and other marine related services. Two parcels provide public access to the water – the town library parcel and the town landing. The library parcel has no dock or other facility for boats. The town landing consists of a paved boat ramp and two or three parking spaces but no other facilities. There is no signage at either location indicating they are public water access sites. A map showing the parcels in Cundy’s Harbor with improved water access (docks or boat ramps) used, at least in part, for commercial fishing, is attached as Map 4 in Appendix A.

Analysis of the critical marine infrastructure

In order to have a viable and well functioning commercial fishing industry in Cundy’s Harbor, certain infrastructure is critical. Through interviews and research the following elements were identified as necessary to the continuation of the commercial fishing industry in Cundy’s Harbor.

Access to the water for commercial fisherman

Most people we spoke to considered water access to be the most important factor in sustaining the fishing industry. Simply put, if fisherman can not get to the resource they depend on, then the fishing industry will die. Seventy-six parcels within the study area (38 percent of the parcels) have access to the water. These parcels make up 43 percent of the total land are in the study area. Thirty of those properties, or 39 percent of the parcels along the shoreline, have docks or similar improvement to facilitate water access. Of those with

² The CF1 district extends 75 back from the water and the CF2 district extends from 75 back to 250 feet back from the water.

docks, nineteen (or 25 percent of parcels along the shoreline) provide access for commercial fishing; the remainder are for private recreational use.

Access to the water for commercial fishing takes numerous forms. Sometimes access is via **publicly owned water access points**. These may take the form of boat ramps, simple docks or more elaborate fishing wharves. In Cundy's Harbor the only public access point is the public boat ramp at the town landing off of Holbrook Street. The Cundy's Harbor Library parcel also provides public access to the water but currently has no improvements (such as a dock, boat ramp, parking, etc.) to facilitate boat access. The topography and the size of the site probably pose significant barriers to creating access improvements.

Another type of access is the **private access enjoyed by a waterfront property owner**. In Cundy's Harbor there are nine docks, depending on the criteria used for categorizing these, generally on relatively small waterfront lots, that the property owner uses exclusively for his own water access for commercial fishing. Typically these have relatively small amounts of water frontage and could not easily accommodate heavier use.

Many of these sites have been in existence for many decades, and all of them are non-conforming grandfathered lots.



Town Landing Area, Summer 2004

Access may also take the form of legally enforceable arrangements, such as **easements or rights-of-way** that allow for access over privately owned property. Likewise, it is not uncommon for landowners to grant permission (revocable at will) for access to the water over their land. Research into any such arrangements or into the precise legal rights and restrictions on various parcels goes beyond the scope of this study and no such arrangements were identified in the inventory.

Much of the access for commercial fishermen in Cundy's Harbor is through larger **commercial wharves** that allow for multiple users. There are nine such wharves in the study area. Examples are the Cundy's Harbor Wharf (the Coop), Watson's, Hawke's and Holbrook's. These are typically larger parcels with operations designed to accommodate relatively heavy use.

Threats to access

Access is subject to several threats. The following are some of the more common threats identified in literature reviewed for this study and by those we interviewed.

Access is threatened as **sales of waterfront lots to non-fishing owners increase**. Factors that drive a decision to sell are numerous and complicated but may include the enticement or “pull” to sell created by rising waterfront land values, the “push” to sell created by high property taxes or other carrying costs, the need to sell due to inability to work, the desire to sell in order to retire from fishing, and the wish to sell to get out of fishing because of other factors such as the economic uncertainty of the industry, frustration with regulation of the industry, or increased conflicts with non-fishing residents and visitors.

The **conversion of larger wharves to non-commercial or recreational marine uses** also threatens access. Many of the factors that might drive a decision to sell a waterfront property can also drive a decision to convert the use of waterfront properties to non-fishing uses. The pressure created by increased demand for recreational boating facilities is significant and has, in the not-to-distant past, created the impetus for a proposal to convert one of the large commercial wharves in Cundy's Harbor to a marina. That proposal was not successful but the pressure for such conversions is not likely to abate given that recreational boating continues to increase in popularity.

An increasing threat to access comes from **disputes over legal access rights** over an old right-of-way or via an easement. Often the precise boundaries of such an access sites, or the legal basis for that access, are murky. Increasingly new landowners are challenging the legality of such historic access sites. Nobody interviewed for this study cited any instances of legal challenges to access in Cundy's Harbor, but several people nevertheless perceived this as a threat to access in Cundy's Harbor.

Maine has a strong tradition of coastal landowners granting permission to access the water over their land but increasingly landowners are **revoking permission for access**. Several studies have noted a trend away from this tradition of access by landowner permission and an increase in posting of no-trespassing signs. This too was not cited as something that has occurred recently in Cundy's Harbor, but is a concern noted by some of those interviewed.

Access in Cundy's Harbor

Cundy's Harbor has experienced little loss of water access over the last decade and in fact has supplemented access for commercial fishermen. We identified only two sites through our information gathering interviews where commercial fishing access has been lost. Both were private access points used only by the waterfront property owner for limited commercial fishing. One of the sites (maplot 064064 - the house next to the library) is not likely to be used for commercial fishing by the new owner. The status and the future use of the other site (maplot 063077 - cottage and dock on Field Road) are uncertain. Establishment of the Mill Ledge Seafood operation on Oakhurst Island has added another larger commercial access site a few years ago.

Despite this relatively modest amount of loss of access, the residents and users of Cundy's Harbor that we interviewed are very concerned about future loss of access. The future of Holbrooks, one of the larger commercial wharves, is uncertain. It has been for sale off and on for several years and is reported to be in need of substantial upgrades and repairs. Moreover, residents and users of the waterfront are aware that loss of water access is occurring up and down the Maine coast and perceive that there is little to prevent the same

thing from happening in Cundy's Harbor, particularly if it gets "discovered" by people with the means and the desire to buy waterfront property in a village setting or to develop a wharf for non-fishing uses.

Mooring and docking facilities

Closely related to the issue of access is the need for an adequate number of moorings (or tie ups and dock slips) to house the commercial fishing fleet. Between 1990 and 1998, the number of moorings in Harpswell increased by over 30 percent, but recreational boats are using an increasing percentage of the moorings. According to a 2002 report from Coastal Enterprises, Inc., only 21 percent of the moorings, boat slips and tie ups in Harpswell were used by commercial boats. Though nobody we interviewed suggested that Cundy's Harbor currently has a shortage of moorings for commercial boats, several people did express concern over the perceived increase in the number of recreational boats in Cundy's Harbor and the possibility that competition for mooring spaces may impact the commercial fishing fleet in the future.

Adequate Parking

Adequate parking similarly is linked to the need for access. Commercial fishing operations need adequate parking for the boat captain and crew and for any delivery or pick up vehicles. Parking for commercial fishing is constrained by the amount of available land and by the competition for parking spaces. In certain locations of Cundy's Harbor, commercial fishermen compete with visitors and residents for parking spaces, while in other locations parking is nearly exclusively for people connected to commercial fishing. Available land for parking is limited throughout Cundy's Harbor.

We identified about four areas that have a "cluster" of commercial marine activities in need of parking. Oakhurst Island has about 6000 square feet of land dedicated for parking which is sufficient for approximately 25 parking spaces. There is not much competition with non-fishing interests in this location and the parking was reported to be generally adequate. See photo #19 in Appendix B.

The town landing area at the end of Holbrook Street has about 1200 square feet available for approximately four parking spaces. Because the town landing is not used very much for public access (probably in part because there is no signage identifying it as a public ramp, there is no signage directing people to the landing, and it does not have the appearance of a public access point) there is not much competition for the very limited parking at this site. See photo #6 in Appendix B.

The northern shore of the village, from Watson's north to Periwinkle Lane, has about 6000 square feet dedicated for about 20 parking spaces in several locations. Again because these areas cater to commercial fishing and do not draw competition for parking from visitors or other non-fishermen, this limited amount of parking is reported to be generally adequate. See photos #9, 13 - 15 in Appendix B.

The southern part of the village, encompassing Holbrook's up to the Coop (Cundy's Harbor Wharf), is the area where there is the most competition, and thus the most concern for

parking. In addition to significant commercial fishing activity, this is the area of the village that sees the most visitor traffic. There is a restaurant, a combination retail lobster dealer and gift shop, and several rental and seasonal houses. About 15,000 square feet of the land is dedicated to parking allowing for somewhere between 40 and 45 parking spaces. However, parking spots are generally not delineated and parking is often haphazard and somewhat inefficient in this area. Most people reported that they felt parking is inadequate for this area. See photos #20 - 22 in Appendix B.

Storage and staging space

Commercial fishermen need to have adequate space on land to store lobster traps, fishing nets, other gear related to their operations, and boats. At the water access sites, adequate space is needed to stage equipment and supplies when loading and unloading. Within the study area, much of the storage and staging space is at commercial docks. We also identified approximately 14 other parcels throughout town that store boats and equipment. Eleven of those are inland and at least two are associated with marine related businesses.

There were reports that some of the commercial wharves in the village lack adequate storage for garbage but other wise people did not report any current deficiencies with space for storage and staging. Nevertheless there is concern that limitations may be placed on storage of fishing gear on residential properties in the future. Several years ago an ordinance was proposed for that purpose. Though it was soundly defeated, the concern is that it might have been a harbinger of changing attitudes toward the visual impacts of on-land storage of fishing gear and boats.

Basic marine related goods and services

A sustainable local fishing industry also requires convenient access to basic fishing related goods and services such as fuel, ice, bait, boat repairs, and wholesale buyers. Generally this requires that there be some critical mass of fisherman to create sufficient demand for those goods and services so that a business that provides those services can survive in the area. Cundy's Harbor has at least eight established businesses within the geographic boundaries of the study area that support the commercial fishing industry. There are also other nearby businesses that supply bait, deliver other supplies and pick up and deliver the daily catch. At least six of the businesses act as wholesale brokers of the catch and also provide docks for loading and unloading bait, ice and in some instances fuel.

Marine related business in Cundy's Harbor

- *Cundy's Harbor Wharf* (Coop) - Loading & unloading, fuel, ice, docking and parking
- *Down Under Dive Services* – Mooring installations & maintenance/Underwater Boat Care
- *Harbor Propeller Services* – Propeller repairs/boat repairs
- *Hawkes* – Loading & unloading, ice, docking and parking
- *Holbrook's* - Loading & unloading, ice, docking and parking
- *Mill Ledge Seafood* - Loading & unloading, fuel, ice, docking and parking
- *Oakhurst Island Inc.* - Loading & unloading, ice, docking and parking
- *Watson's* - Loading & unloading, fuel, ice, docking and parking/Some marine supplies/Convenience store

Nobody indicated a shortage of these basic goods and services. They did express concern for maintaining current levels of supplies and services. Additionally, several people suggested that expansion of these services, or the addition of other services such as a processing facility, would be difficult given current constraints in Cundy's Harbor such as scarcity of land, limited wastewater treatment capacity, restrictions to expansion and new development under the current ordinances. Several people who felt commercial fishing should be enhanced in Cundy's Harbor favor examination of policies that might provide opportunity for such growth.

Overview of current land use regulations

Compared to other coastal communities, the Town of Harpswell is actively protecting its working waterfront through land use regulations. Like most Maine coastal communities, Harpswell has adopted the commercial fisheries/marine activities district from the State shoreland zoning prototype, including provisions to encourage and promote marine related activities. Harpswell has gone a step further than most coastal communities, and implemented exclusive zoning for commercial fishing, the most effective tool in protecting working waterfronts. There are two hundred and eighteen miles of coastline in Harpswell, with about one quarter of that zoned commercial fisheries. Additionally, the town's Harbor and Waterfront Ordinance gives priority to fishermen for moorings.

There are six zoning districts in Harpswell, the Interior district, and five shoreland zoning districts. The shoreland zoning districts are Resource Protection, Shoreland Residential, Shoreland Business, Commercial Fisheries I and Commercial Fisheries II. The Commercial Fisheries I (CF1) district extends seventy five inland from the maximum high water mark and Commercial Fisheries II (CF2) extends from the CF1 district to two hundred and fifty feet inland from the maximum high water mark. The uses permitted in these commercial fisheries districts are nearly exclusively limited to marine related activities. Harpswell's shoreland zoning ordinance also specifically prohibits anyone from restricting the use of property such that it "limits commercial fishing or its related uses as a home occupation."

Cundy's Harbor is zoned CF1, CF2, and Interior with a small portion of a Shoreland Residential district served by Acorn Lane and Taylor Road. See zoning map attached as Map 5 in Appendix B.

Dimensional Standards in CF1 and CF2 Districts

Within the shoreland zone, lots must generally be at least 40,000 square feet in area for residential structures. In CF1 and CF2 there is no minimum lot size for parcels with permitted commercial structures. Structures in CF1 and CF2 must be set back at least 75 feet from shore and 25 feet from side lot lines. However permitted commercial structures (marine related structures and functionally water dependent uses) in these districts are exempt from the shore setback requirement to permit necessary operational access to the water. Maximum lot coverage is 70 percent except that in CF2, uses not functionally water dependant are limited to 20 percent lot coverage. There is a 30 foot height restriction on all new and expanded structures.

Commercial Fisheries I District

In the CF1 district, new residential buildings are not allowed, but structural alteration and replacement of existing residential buildings is permitted, with permission of the Code Enforcement Officer (CEO) and subject to setback, height and lot coverage limitations. Conversions of seasonal to year-round residences are not permitted in CF1. Industrial and institutional buildings are not allowed. New commercial buildings in the CF1 are limited to functionally water dependent uses³ or accessory to commercial fishing uses. Fish processing operations are considered commercial and thus are a permitted use in this district. New commercial uses are subject to the 30 foot height restriction and the 70 percent lot coverage limitation. They are not subject to 75 foot shore setback.

Commercial Fisheries II District

In the CF2 district, new residential buildings are allowed, including multi-family units. Structural alteration and replacement of existing residential buildings is permitted, with permission of the Code Enforcement Officer (CEO). Conversions of seasonal to year-round residences are permitted in CF2. New or expanded residential structures are subject to the 30 foot height restriction and a 20 percent lot coverage limitation. Industrial and institutional buildings are not permitted.

New commercial buildings in the CF2 must be for marine related services. "Marine related" is left undefined but certainly includes a broader set of uses than those which are "functionally water dependent" or "accessory to commercial fishing." Retail stores for marine supplies, limited to nine hundred square feet in size, are permitted in the CF2. Commercial fishing marinas and boat repair facilities are also permitted. New or expanded commercial structures are also subject to the thirty foot height limitation but can cover up to 70 percent of the lot.

Interior District

Most of Cundy's Harbor is in the Interior zone. Most types of residential buildings are permitted including multi-family units. Commercial, industrial and institutional buildings are also permitted in the Interior zone. In this zone, residential is the predominant use, with a few lots dedicated to mixed use and public land. Minimum lot size is 40,000 square feet or 80,000 square feet if located within a subdivision, with a 150 foot road frontage.

Non-conforming Structures and Lots

Nonconforming structures and lots can be transferred and continued to be used. No permit is required for normal upkeep and maintenance including repair or renovations as long as they do not expand the nonconforming use. Nonconforming structures can be expanded

³ "Functionally water dependent use" is defined as those uses that require, for their primary purpose, location on submerged lands or that require direct access to, or location in, coastal and inland waters and which cannot be located away from these waters

with a permit as long as the expansion does not increase the nonconformity of the structure. This means it cannot expand toward a water body such that it decreases the setback and it cannot expand beyond lot coverage restrictions or height restrictions. Any portion of a structure that is within the setback from water bodies may not be expanded in floor area or volume by 30 percent or more over the lifetime of the structure.

A nonconforming structure can be relocated on the same parcel as long as it meets the wastewater disposal system requirements and does not increase the non-conformity. Structures which are damaged or destroyed such that more than 50 percent of the market value is lost may be replaced within one year but shall be within the setbacks to the greatest extent possible and under no circumstances can it increase the nonconformity. Use of a nonconforming structure may be changed upon Planning Board determination that the new use will have no greater impact on a water body or adjacent property than the previous use. That determination shall be based on a variety of things including habitat, erosion and sedimentation, natural beauty, public access to waters, and marine related activities including fishing.

Nonconforming uses may not be expanded except for nonconforming residential uses and then only if the expansion does not increase any non-conformity of the structure (such as height, setback or lot coverage). Nonconforming uses that have been discontinued for more than one year may not be resumed. A nonconforming use may be changed to another nonconforming use upon Planning Board determination that the new use will have no greater impact on a water body or adjacent property than the previous use. However a nonresidential use in a CF1 district may not be changed to a residential use.

Comprehensive Plan

The Harpswell Comprehensive Plan of 1993 promotes and encourages marine industries and working waterfronts. It points out that traditional marine uses are being squeezed out as residential growth and increased land values make establishment of new uses difficult. The Comprehensive Plan sets out marine policies to promote retention and growth of marine resources including but not limited to fishing, shellfishing, boat building, and marine supply and services. The policies would allow marine related activities - provided they minimize adverse impacts on neighboring properties and the environment - and promote shorefront districts for marine related uses.

The Comprehensive Plan also states that because Harpswell provides access to the water for the region, there is competition for both marine and recreational uses. Though the plan concludes that there is a need for improved public access to the shoreline, it says little about how to achieve that. The Comprehensive Plan also contains a policy to support performance based zoning.

Preserving Cundy's Harbor's Working Waterfront

In order to evaluate the effectiveness of the town's policies and regulations in preserving Cundy's Harbor as a working waterfront, we interviewed citizens about challenges and threats to Cundy's Harbor and researched issues facing working waterfronts in Maine and New England. We then assessed how the current policies and regulations of the town fared in addressing the issues and challenges faced by Cundy's Harbor. Finally, we researched regulations and policies from other coastal communities to identify options that address the issues and challenges faced by Cundy's Harbor, and evaluated those for both the potential benefits and drawbacks of each option.



Oakburst Island, Fall 2004

Issues and Challenges to Cundy's Harbor

To discover the issues and challenges that Cundy's Harbor faces we interviewed about a dozen individuals that live or work in Cundy's Harbor. We also met with about three dozen people from the public at a community forum. During these sessions we discussed Cundy's Harbor village, the working waterfront, and the commercial fishing industry. We asked people to consider and try to answer the question: "What needs can and should the town address in order to support the working waterfront and the marine related businesses in Cundy's Harbor?"

The following is a list of the issues and challenges that emerged from those discussions that appear to be the more pressing issues for Cundy's Harbor at this time. Some of these issues and challenges are also discussed in the section above on Critical Marine Infrastructure.

Escalating Land Values

Coastal properties are in high demand in Harpswell and in other Maine coastal communities. As a result the value of that land has increased dramatically in recent years. Such significant increases in value threaten access by fostering land use changes, land ownership changes and by pricing traditional marine related use out of the land market. (See discussion concerning access above.) The disparity in land values between coastal properties and other properties in Harpswell is illustrated by the data on assessed values by zone in Harpswell for 2003 found in Table 2. The average per acre

value of land in the CF1 zone is two and a half times the average per acre value of all land in Harpswell and the average per acre value of land in the CF2 zone is almost two times higher. When comparing the average per acre value of land in the CF1 and CF2 zones to the average value of an acre of land in the interior zone the contrast is even greater. CF1 land is $3\frac{3}{4}$ more valuable and CF2 land is almost three times more valuable.

Rising Property Taxes

With higher land values come higher assessments for coastal landowners resulting in an increased property tax burden. For people involved in marine related activities such as commercial fishing, the value of their catch - and thus their gross income - is not rising to meet these added costs. In an already beleaguered industry that has recently experienced volatile and generally unfavorable economic conditions, the added burden of paying a greater share of the town's property tax due to rising assessed values (see table 2) can be the proverbial economic straw that breaks the camel's back.

Conflicts with Non-Fishermen

Several people indicated that conflicts with non-fishing people over visual and other impacts from fishing (noise, light, odor, storage, loading & unloading space, etc.) is a potential problem. It was reported that on occasion vacationers renting in the village have lodged complaints about fishing operations, but generally there seem to have been few instances of this sort of conflict so far in Cundy's Harbor. However other coastal communities have experienced substantial increases in complaints as people move in to those communities from outside. Some people expressed concern that as the demographics of Cundy's Harbor

2003 Assessed values (town wide) by zone

zone	Avg parcel size (ac)	Land_val/ parcel	Land_val/ acre	Building_val/ parcel
CF1	1.60	\$145,106	\$90,883	\$73,892
CF2	0.92	\$64,245	\$69,703	\$56,359
IN	2.16	\$52,067	\$24,141	\$67,006
SR	2.50	\$115,261	\$46,057	\$86,789
SR1	5.00	\$166,620	\$33,315	\$83,157
Total	2.95	\$107,058	\$36,257	\$74,072

Table 2. Source: Harpswell website

(www.curtislibrary.com/harpswell/index.html)

The 2003 average per acre value of land in the CF1 zone is 2 ½ times (250% greater than) the average per acre value of all land in Harpswell. Building values are fairly consistent from zone to zone and are nearly identical as between CF1 and the town average.

The 2003 average per acre value of land in the CF2 zone is almost 2 times (192% greater than) the average per acre value of all land in Harpswell. Building values in CF2 are about ¾ (76%) the value of the town's average per parcel building assessment.

change, the frequency of conflicts and complaints could increase. Similarly, as recreational boating increases so to does the possibility of conflicts.

Inadequate Parking

Commercial fishing operations need adequate parking for the crew and for delivery vehicles. Available land for parking is limited throughout Cundy's Harbor. In areas where commercial fishermen compete with visitors and residents for parking spaces, parking has become an issue. In other locations parking is nearly exclusively for people connected to commercial fishing and therefore is adequate.

Restrictions to Storage of Marine Related Equipment

Commercial fishermen need space to store fishing gear (especially lobster traps) and boats. Though people did not report any current deficiencies with space for storage there is concern that changing attitudes toward the visual impacts of on-land storage of fishing gear and boats may lead to future limitations on storage of fishing gear on residential properties.

Conversion of Marine Related Sites

Despite relatively little loss of access in Cundy's Harbor there is concern about future loss of access due to conversion of marine related sites to residential properties. Loss of water access is occurring up and down the Maine coast and could happen in Cundy's Harbor if people with the means and the desire to buy or develop waterfront property for non-fishing uses choose to do so. Many of the factors that might drive a decision to sell a waterfront property can also drive a decision to convert the use of waterfront properties to non-fishing uses.

Availability of Marine Related Services

While Cundy's Harbor has adequate basic goods and services such as bait, fuel, ice, marine related supplies, etc. people expressed concern for maintaining current levels of supplies and services. Several people suggested that expansion of these services, or the addition of other services such as a processing facility, is important for sustaining a working waterfront but under current zoning would be difficult.

Crowding in Harbors

Nobody suggested that Cundy's Harbor currently has a shortage of moorings for commercial boats but people did express concern over the increase in the number of recreational boats in Cundy's Harbor and the possibility that competition for mooring spaces may impact the commercial fishing fleet in the future. Additionally, the practice of storing harvested lobsters in harbor waters may be incompatible in areas where there is substantial recreational boat traffic thereby creating further competition between recreational boating interests and the commercial fishing industry.

Environmental Degradation of Harbor Waters

Several people felt that the marine resources have been impacted by overboard discharge of waste. Shell fish beds have been closed and lobster production may have been reduced. Several people viewed these environmental threats as a substantial challenge to the future viability of the fishing industry and thus the working waterfront.

Regulatory Limitations to Marine Related Activities

Several people felt that the town's current shoreland zoning was too restrictive. They felt that marine related operations could not expand or change to keep up with market changes or to achieve the growth they felt was necessary to maintain a viable operation.

Public Water Access

In the discussions about access there were mixed opinions concerning the need and desire for additional public water access sites or a public wharf in Cundy's Harbor. Additional public access or improved public access would likely encourage additional recreational boating, something seen by many as anathema to commercial fishing. Also, some were concerned that public access for commercial fishing might create unfair competition for owners of private docks and wharves.

Loss of Community Character

Several people talked about the character of the village and particularly the historical buildings. There is concern that changes in ownership of properties may lead to alterations that are out of character with the current village architecture and aesthetic both in terms of the bulk of the buildings and the architectural detailing. This issue, though not specifically concerned with preserving the working waterfront, is important when giving consideration to the village as a whole rather than only in its capacity as a working waterfront.

Statement of Village Concept for Cundy's Harbor

Cundy's Harbor should remain a village that accommodates multiple activities from fishing access to tourist/restaurant to village center (library, church, retail and a relocated post office). Because the village sits atop a fragile water supply, and is limited in land availability, future development ought to be on a very small and careful scale. New housing should be sized to fit with the existing buildings, be located on land near the village (not spread along Cundy's Harbor road), and be planned in a way that does not harm the water supply or further burden traffic. The village itself should be made more walkable to discourage driving – new sidewalks put in, utility poles buried below ground, and bike paths created to connect to other parts of Town. Retail should be locally owned and small in scale. Holbrook wharf ought to be maintained with a small restaurant and working fishing operations, and restrooms and a pump out facility might be added. Land could be purchased to create beach access to Sandy Cove for local residents.

At a community visioning session in Harpswell several years ago residents drafted a vision statement for Cundy's Harbor. The statement helps to frame many of the issues that remain relevant to the village today.

Issues and Challenges Common to Maine Waterfronts

Harpswell faces issues and challenges common to many of the other working waterfronts along the Maine coast. A recent study by Coastal Enterprises Inc. delineated many of these challenges based on a survey of 25 towns with working waterfronts. They found the conversion of working wharves to residential and recreational uses decreases the commercial fishing opportunities available to local fishermen. Additionally, they concluded the growth in residential boating represents an increased challenge for harbor and mooring management as the competition for limited mooring spaces and travel lanes increases.⁴

A central theme of the research was that the strong residential housing market and the rising demand for waterfront residential property is causing significant increases in residential coastal land values. This intense real estate pressure to use waterfront in noncommercial water dependent ways could gradually erode fishing access. Fishermen and towns can not afford coastal property and thus over time, the use of that land is shifting away from its traditional marine related use. Finding reliable parking year round is a land use access problem fishermen are increasingly facing. Moreover, new coastal property owners often close off and/or contest public access to the shore and the water.

CEI concluded that these substantial shifts in land use and ownership are limiting the ability of commercial fishermen to practice their trade and are threatening the fisheries industry. The report noted that the threats from development pressure, higher property taxes, and changing demand and use of waterfronts are “all related and tied to demographic, local real estate and wider economic changes now influencing coastal Maine.”

Assessment of Current Policies and Regulations

Generally the town's policies and land use ordinances appear to be working well in preserving Cundy's Harbor as a working waterfront. There have not been many significant changes in land use or marine related uses – including access – in Cundy's Harbor in recent history. For the most part the commercial fishing industry remains viable and fairly robust in Cundy's Harbor. Most of the challenges to the working waterfront of Cundy's Harbor come from influences that are beyond the control of the town and its policies such as federal regulation, market conditions - both within the land market and the seafood industry - and environmental conditions that impact the resource.

The following is an assessment of the effectiveness of the town's policies and land use ordinances in protecting the working waterfront of Cundy's Harbor. It is based on a review

⁴ CEI reported that 64 percent of the towns surveyed perceive commercial fishing access to be a considerable problem and 80 percent said they are planning to address access issues. Kittery, Kennebunkport, Biddeford, Freeport and Boothbay Harbor are among the towns where access is significantly at risk according to CEI.

of the current land use regulations, discussions with members of the community, and an analysis of the issues.

Exclusive Zoning

Exclusive zoning for commercial fishing is an effective tool in protecting working waterfronts but has the potential for being too restrictive if demand for the allowed uses diminishes. Because the commercial fishing district covers most of the waterfront in Cundy's Harbor, the impact from such a reduction in demand could be significant. Consideration might be given to either creating more flexibility in the types of uses permitted. One potential approach might be through performance zoning⁵, a concept the comprehensive plan endorses. Another approach might be to revise the commercial fishing district boundaries so that the CF1 and CF2 districts cover a more targeted area where the primary current or historic uses are marine-related.

Fishing As a Home Occupation

Harpwell's shoreland zoning ordinance prohibits anyone from restricting commercial fishing or related uses as a home occupation, thereby stating a clear intent on the part of the town to protect individual home based fishing operations. The ordinance could even potentially restrict the town from passing further land use ordinances that might limit home based fishing operations (for instance, arguably this ordinance would prevent passage of an ordinance that restricted a person from storing traps on his or her yard). However, the language of this provision is fairly vague (as an example, could a landlord restrict a tenant from storing a boat or repairing traps as part of a lease agreement?) making it difficult to determine how much this part of the ordinance would really accomplish if used to challenge someone's actions.

Definition of "Marine Related"

The term "marine related" is used several times to delineate the types of uses allowed under certain conditions but is never defined (whereas the term "functionally water dependent" is defined). While "marine related" seems to include a broader set of uses than those which are "accessory to commercial fishing," greater specificity as to what is and isn't allowed under this definition would reduce the potential for permitting unintended uses because the ordinance was not clear.

Height and Bulk Regulations

Some of the height and bulk regulations in the current shoreland zoning ordinance may not be achieving the desired results. Under the current ordinance all new and expanded structures within the CF1 district can be as much as 30 feet high and may have lot coverage of up to 70 percent if they meet other setback requirements. An existing non-conforming

⁵ Performance zoning regulates land use based on whether the use will meet measurable performance criteria. Generally conventional zoning regulates land uses based on a list of permitted uses and dimensional standards whereas performance zoning looks primarily at whether a proposed use meets community goals.

residence in the CF1 that is less than 30 feet could therefore be expanded up to a height of 30 feet. Depending on the size of the lot, the floor area of the residence also might be expanded substantially. The community may want to consider whether this meets its desire to keep the houses in the village to their current scale.

In the CF2 district, new residential buildings are allowed and can be as much as 30 feet high, but with a 20 percent lot coverage limitation. The 20 percent limitation for new residential will keep the bulk of some new residences down, particularly on properties closer to the water that tend to be small lots. However, given that the CF2 zone is supposed to be primarily for commercial fishing, permitting new residential structures may be incompatible with that goal. The ordinance allows a new (30 foot high) house to be built as close as 75 feet to the water in a “commercial fishing” district. It might be more appropriate to place some greater restrictions on new residential buildings in all CF districts but to be more selective in drawing the CF district boundaries.

Minimum Lot Size

The minimum lot size in the Interior zone, in which most of Cundy's Harbor falls, is 40,000 square feet. This minimum lot size requirement may present a barrier to putting the interior land to use in support of commercial fishing. For instance, some low impact uses that do not require water access, such as storage or small repair facilities, might be sited on smaller than 1 acre lots. Under the current zoning, new lots that size could not be created.

Development Review

The level of development review can affect the extent to which ordinances achieve their intended results. Many of the provisions in the shoreland zoning ordinance only require permission of the Code Enforcement Officer (CEO). For instance, structural alteration and replacement of existing residential buildings is permitted in the CF1 district with CEO review. The community may want to consider subjecting all projects in the shoreland zone, or at least in the commercial fishing districts, to a higher level of review by the planning board, in order to ensure that the underlying goals of the ordinances are met.

Ordinance Enforcement

Failure to enforce existing ordinances may result in inappropriate or undesirable development. Several citizens expressed the opinion that ordinances on the books could and should be enforced better.

Water Quality and Quantity

Water quality and quantity remain a concern in the village. Some citizens suggested that applicants for expansion of houses should be required to account for groundwater issues, that any new building proposal should be required to show there is adequate water supply, and that all development proposals should include water quality and quantity studies.

Moorings

Several years ago, the harbor committee revised the moorings policy. They were concerned that an increasing number of people were getting moorings in Harpswell because it was cheap for them to moor their recreational boats. They implemented a policy requiring anyone applying for a mooring to be able to demonstrate in writing, that they have access to the water. Several people expressed the opinion that this policy has worked well in ensuring an adequate supply of mooring spaces for commercial and recreational boaters alike.

Tax Assessment

A number of people felt that the methodology used for assessing property values for tax purposes, particularly property on the water, need to be reviewed and possibly revised. Nobody argued against using market value as the basis for the assessment (as the law requires) but rather that the manner in which market value is determined is flawed. They are of the opinion that many parcels are highly valued even though they are unbuildable or extremely restricted due to the size of parcels and the zoning regulations.

Comprehensive Plan

The Comprehensive Plan promotes marine related activities and shorefront districts for marine related uses but has few specific strategies or actions to achieve that broad goal. Likewise, the plan concludes that there is a need for improved public access to the shoreline, but it says little about how to achieve that. If the town continues to support these comprehensive plan goals, it may want to consider adopting more specific strategies for achieving the goals.

Options – Policies, Regulations and Investments

The options that follow are derived from a review of ordinances and policies from other towns, a review of literature on working waterfronts, from analysis of Harpswell's Comprehensive Plan, ordinances and policies, and from discussions with members of the community.

Ordinances and Policies from Other Towns

We reviewed land use regulations from the coastal communities of Bar Harbor, Beals, Belfast, Camden, Freeport, Jonesport, Portland, Rockland, Rockport, Southwest Harbor, Tremont, and Thomaston. While these towns have a variety of land use control options, most adopt the commercial fisheries/maritime activities district from the state's Shoreland Zoning Ordinance. However the state's model Shoreland Zoning Ordinance does not restrict residential development where working waterfront uses occur. Communities that specifically addressed residential development in the shoreland zone generally take one of two approaches. Either they restrict all non-marine related development within the working waterfront (usually called the commercial fishing district) or they include provisions for

mixed uses that encourage economic development, while also promoting the working waterfront. These communities have concluded that exclusively zoning their waterfronts could limit flexibility in the future.

Following are some concepts from the Rockland, Camden, Southwest Harbor and Portland ordinances for protecting working waterfronts, while retaining flexibility to adapt to the ever changing economy of the Maine coast.

Rockland

Rockland has several waterfront zones including marine dependent, marine related commercial and marine related industrial. The zones are progressively more open to other non marine uses, such as commercial districts with limited multi family and commercial and maritime uses with hotels and motels. Waterfront zones that include uses that need direct proximity to the water exclude residential uses. The working waterfront also includes districts that permit all uses, including retail and restaurants.

Camden

The purpose of Camden's waterfront district includes protecting its scenic value and views from the land, its accessibility to the public, and its economic value for functionally water-dependent uses. There are several districts including the Harbor Business District. In this district, other uses besides marine related are permitted, but with restrictions. For instance residential is allowed (including multi family), as well as inns, theaters, entertainment, and financial services, but not at the floor level. Commercial uses are allowed, but they are mostly marine related. Retail sales that tend to detract from or interfere with a high intensity of pedestrian activity are not permitted. Existing storage within barns or similar accessory structures are permitted also.

Camden has additional space and bulk standards that help to protect the scenic view of the waterfront. A minimum of 20 percent of the lot area must be kept free of buildings and structures as a single, straight view corridor of constant width from street to harbor line. Any fence in the view corridor shall be of open construction.

Southwest Harbor

Like Harpswell, Southwest Harbor has several waterfront districts, similar to Harpswell. The commercial fishing /maritime activity zone is the most restrictive. These are shoreland areas within the Harbor which already contain or appropriately might contain commercial uses primarily related to the traditional fishing industries. Recreational water-dependent uses are limited in order to protect berthing space and onshore staging areas for commercial fishing enterprises. Other less restrictive zones permit increasingly more non marine related uses. The Maritime activity zone are shoreland areas of restricted size within the Harbor which already contain or appropriately might contain commercial uses primarily related to marine recreation, commerce, and services. The Harbor Zone identifies other shoreland areas within the Harbor which allow not only the same uses as the Maritime Activity Zone, but also encourage the development of single family residential use. Finally, the Shoreland Residential

Zone permits shoreland residential areas on both tidal and fresh water, but not in the harbor area.

The Commercial fishing zone does not permit hotels, motels, boatels, inns or similar transient accommodation, commercial boat storage within structures (structures existing on the lot may be used but not expanded), non-maritime industrial use, marinas, and new residential uses. They do have an exception that no more than two residential units per lot are permitted as accessory uses provided that the following criteria are met:

- The existing use has been established for at least two years;
- The residential units must not be on the ground floor; and
- The total area of the building(s) devoted to all accessory uses is less than 40 percent of the total area of the building(s).

Other commercial uses are permitted as long as no more than one residential unit per lot is permitted as an accessory use provided that this unit meets the same criteria established above.

Portland

Portland has several zones pertaining to working waterfronts. These include the waterfront central, waterfront port development and waterfront special use. The Waterfront central zone was created to protect and nurture water-dependent and marine-related support uses.

A priority rating is described in the code which gives existing and potential water dependent uses first priority, and other marine and marine related uses second priority. Other specified uses are encouraged only if they do not interfere with and are not incompatible with first and second priority uses. Uses that could create an adverse impact on marine uses are not permitted. Thus any use that displaces an existing water-dependent use; reduces an existing commercial vessel berthing space; interferes with the activities and operation of existing water-dependent uses or significantly impedes access to vessel berthing or other access to the water by water-dependent uses; or substantially reduces or inhibits existing public access to marine or tidal waters, is not permitted. The code does permit commercial uses above the ground floor level, provided that permitted uses do not exceed 50 percent of the total floor area of the building.

Residential use is permitted on the second floor as long as the resident is an owner (meaning they own at least 50 percent of the business) of a marine business, and there are restrictions on one unit per wharf, year round residence, and not larger than 1000 square feet. Drinking establishments, hotels, motels or boatels, and civic centers and meeting halls not permitted. There are no minimum lot sizes or setbacks.

Portland also has a waterfront special use district. At a minimum, parcels in this zone generally enjoy visual access to the port. It is further recognized that this area has historically been used for marine uses and that some of the parcels have the capacity to accommodate active water-dependent uses. While physical access to the water may not currently be legally available to all parcels in this zone, it is anticipated that developments in this zone may be able to negotiate easements for access. At a minimum, development in this zone should not be incompatible with marine and water-dependent uses. Uses which contribute to the

maintenance and improvement of the infrastructure along the water's edge as a condition of use are strongly encouraged.

Finally, Portland has design guidelines for the waterfront. In these guidelines, there are suggestions for developers to create and/or replace structures that fit in with the character of Portland Harbor.

Other Options

Non-regulatory

- Undertake an effort to provide **education about commercial fishing** – its role in the history and the culture of the town, its economic contributions, etc. This could be in the form of a **brochure**. The town could also form a commercial fishing **heritage trust** with other coastal communities to support and promote the cultural heritage of working waterfronts.
- Support for **tax policy** changes that would permit assessment of marine related uses based on their current use (such as is provided for agricultural, forestry and open space land). The town could organize a coalition with other coastal communities to work on property tax relief for marine related activities or commercial fishing operations.
- Create a **dedicated commercial fisheries fund** to be used for **investments in the waterfront** such as public facilities and improvements related to commercial fishing. These might include parking, public water access, and maintenance and repair of public infrastructure such as piers and wharves. Funding sources for such a fund might come from **impact fees** paid by property owners that convert part or all of a commercial fishing wharf to recreational or residential use. The town could also apply for waterfront improvement **grants** or **raise mooring fees** to be put in a dedicated fund to be used to address harbor and waterfront needs and issues
- **Purchase waterfront land** or work with land trusts to **obtain land for public water access**. The town could consider instituting a **purchase of development rights** program where development rights that are incompatible or would have an adverse impact on a working waterfront are assigned a value and the property owner is compensated in exchange for extinguishing those incompatible development rights.
- Encourage **carpooling** (have the deckhands go to the home of the skipper and all drive together to the wharf rather than all come in separate vehicles) to reduce the parking problems.
- The town could consider hiring a **full time harbor master** to address harbor management issues.

Regulatory

- To help reduce the potential for conflicts and complaints between fishermen and new residents the town could consider requiring that **realtors notify** prospective purchasers within CF zones of what activities, sites, sounds, smells, etc. to expect when moving to a village with a working waterfront.
- To protect the fishing industries “right to fish” the town could consider an ordinance that specifically **permits some “nuisance” like conditions** due to fishing related activities (including those that create smells, noise, early hours of activity, lights, or other inconveniences, etc.) within the village or other defined area.
- Provide fishermen with **first right and refusal** on waterfront property.
- **Dedicate a percentage of its public parking** areas for the exclusive use of commercial fishermen or related services.
- Consider **restrictions on new non-marine related uses** within certain well defined commercial fishing zones or more **specificity as to what uses** are and are not permitted within the CF zones (this might also include re-designating zones so they more accurately reflect the historical land use pattern of that area).
- Consider **restrictions to the size, setbacks, percent coverage and total square footage of houses** when expanding within commercial fishing zones or other shoreland zones
- Consider allowing **mixed uses** that are not necessary strictly marine related within certain commercial zones so that if the fishing industry has a substantial downturn, then other uses have not been completely zoned out.
- The town could adopt policies to require or encourage that **interior district land** - immediately behind the commercial fisheries districts - be used for public parking and other land uses that support the commercial fisheries industry but that do not require water access. This may include provision for “workforce” housing that could house the people working in the commercial fishing industry at prices which are affordable.

Evaluation of the Options for Cundy's Harbor

Following is an evaluation of options discussed above. The evaluation is a cursory analysis of the potential advantages and disadvantages to pursuing each option, designed to give the reader a better sense of the value a particular option might have for achieving the community's goals. This evaluation should not be viewed as the final word on all potential benefits or detriments of an option. If the community is interested in pursuing any of these options, it would be well served to engage in further community discussion evaluating the pros and cons.

Non-regulatory options

Education about commercial fishing and working waterfronts. A community effort to educate and inform the public about the history, culture and contributions of commercial fishing in Cundy's Harbor had broad support from people at the community forum. Other working waterfronts have created **brochures**, which are generally an effective educational and informational tool that are relatively easy to produce and distribute. It does require some time commitment and money for production costs. Some communities have formed a **commercial fishing heritage trust** with other coastal communities. This too would be relatively easy to do because there are existing models from other places that could be replicated. A heritage trust has potential for delivering a compelling message about working waterfronts to the public. It could also be effective in creating or improving relationships with neighboring communities and could be a vehicle for political change. As with other educational efforts, it requires time fairly significant volunteer time commitments.



Support for tax policy changes. Many residents stated that property tax is a major concern but there is relatively little that can be done through town government.⁶ The community could however be a greater force for influencing tax policy at the state level by organizing a coalition with other coastal communities, or joining an existing coalition, to work on property tax relief for marine related activities. Models for current use taxation coalitions, on which to base such an effort, already exist. It has the potential for spurring tax policy change but may also become a vehicle for other beneficial political changes and for educating legislators about specific issues surrounding working waterfronts. The formation of a coalition of communities could also build relationships with similar working waterfront communities. Probably the biggest downside, besides the time and effort required, is that the public may perceive this as a special interest group effort to get an “unfair” tax break.

Fund for investments in the waterfront. The obvious benefit from a fund is that the community is able to make desired improvement to the infrastructure that supports the working waterfront. The various mechanisms for funding have differing advantages and disadvantages. **Impact fees** have the advantage of being relatively easy to set up because there are existing models. They also are not another tax but rather are a source of funding linked to the user. However they can be difficult to administer and may alienate the

⁶ One exception to this, discussed below, is that zoning that places clear limitations on development rights may result in lower assessed values for affected properties and thus reduce the property tax burden.

development community and landowners who often perceive that impact fees are unfair.

Grants are another non-tax funding source. Because grant money is given to the community, it does not impose a financial burden on any segment of the community. Also, the grant writing process often causes a community to engage in planning or visioning exercises that generate benefits beyond the grant process. It does take time, effort and sometimes some money to write grant proposals. Also, grant awards may come with restrictions that may not be acceptable to a community. Implementation of an **increase in mooring fees** is another non-tax funding source that is linked to the discretion of the user. While care would be required in not imposing additional burdens on commercial fishing operations, increases in mooring fees could nevertheless alienate boat owners and be perceived as unfair.

Obtain land for public water access. If the community decides that there is a need or a demand for additional or improved public access to the water, it could achieve those objectives by obtaining waterfront land either through direct purchase of land or by working with a land trust to get rights to use some land. This would be a fairly certain and permanent way to ensure additional access if that is what the town values. Land acquisition is not without its disadvantages. It may be complicated and expensive both to purchase and to maintain (steward) land. Also, some communities find they may alienate residents who are against public ownership of land. Another alternative to town ownership of land is the **purchase of development rights and/or access rights**. Such a program would shift development away from inappropriate areas, such as the working waterfront, and could increase the amount of land for public access. Also, because the town would not be buying land but rather some of the rights in the land, it can be less expensive than outright land purchase and less susceptible to citizen objections to town ownership of land. A purchase of development rights program can nevertheless be complicated and expensive.

Regulatory options

Revise shoreland zoning ordinance. This report identifies several revisions that could be considered for the shoreland zoning ordinance. These include additional restrictions on new non-marine related uses within commercial fishing zones or more specificity as to what uses are and are not permitted within the CF zones. Revisions might also include revising zones so commercial fishing zones are restricted to areas that already contain or appropriately might contain commercial uses primarily related to the traditional fishing industries. A couple of the disadvantages to revising any ordinance is that it requires some time and financial resources on the part of the town and can lead to citizen distrust if they feel that “the rules” are always subject to change.

The advantage of more specificity (particularly with respect to identifying inappropriate non-marine related uses) in the ordinance is that there is less uncertainty for developers, land owners and the reviewing body (CEO or Planning Board) and therefore increased likelihood that only appropriate uses will be permitted. It also probably decreases the likelihood of challenges to the town’s permitting decisions. The disadvantages are that greater specificity decreases flexibility that sometimes leads to better results based on site specific or applicant specific circumstances and conditions.

Some of the disadvantages associated with tightening up the use section of the shoreland zoning ordinance can be mitigated by revising commercial fishing zones so they are more targeted and smaller. By doing so, stronger regulations may be more easily justified. They are more likely to be seen to be in keeping with the purpose of ensuring adequate and appropriate areas for commercial fishing. Also they would be less likely to impact residential properties and other land that is not essential for commercial fishing. *Southwest Harbor's* ordinance is a good example. There seems to be community support for review of commercial fisheries boundaries to determine if they are adequate and appropriate.

Create mixed uses or tiered zones for commercial fishing. If the community did consider revising the commercial fishing zones it could also consider other zoning systems such as those found in the *Rockland* and *Portland* ordinances. *Rockland* has waterfront zones that are progressively more open to other non marine uses and *Portland* has developed a priority rating which gives water dependent uses first priority and marine related uses second priority. An advantage of some of these more flexible concepts are that they may help keep the waterfront economy healthy by allowing some mixed uses where fishing is not really viable while still keeping sufficiently strict regulations on the working waterfront.

More restrictive bulk, setback and lot coverage limits on houses in CF zones. Current zoning permits a great deal of expansion to most existing residential structures. Community feedback suggests that many people feel such expansions change the fundamental character of the village that is so valued by many. Placing reasonable limitations on the bulk and height of houses would help preserve the character of the village. Such limitations may also discourage conversion of housing used by fishermen into non fishing residences and may moderate increases in real estate values. The most significant drawback to more restrictive bulk, height and coverage standards is that these may – or may be perceived to – restrict property rights and future value. For homeowners counting on the equity in their property this may create a substantial burden. Moreover, any change to “the rules,” especially one that might result in a reduction of future property value, may be seen as unfair. These drawbacks might be less significant if they are only applicable to revised “targeted” commercial fishing districts. Also, to the extent more restrictive standards do in fact limit future property value, assessed values should reflect that reduction resulting in a lower property tax burden to the affected property.

Design guidelines for residences in the village. Design guidelines that provide some control over the height, bulk, building materials and other standards related to the visual appearance of buildings could help to ensure that new or remodeled structures in the village fit with the character of Cundy's Harbor. There are many examples of guidelines that could serve as a model and they can be made as flexible or strict as the community desires. Design guidelines have many of the same advantages and disadvantages as more restrictive dimensional requirements discussed above. However, since design guidelines generally seek to control aesthetic choices, many communities find it more difficult to justify the burden these may impose on property owners.

Require planning board approval for all residential applications in CF zones.

Currently most alterations, replacements or conversions of residential structures are reviewed by the CEO. If the Planning Board had responsibility for reviews there would be more of an opportunity to make the applicant aware of the community policy to protect and

promote working waterfronts, and to make sure this policy is adequately considered during the review process. The Planning Board would be in a better position to determine if an expansion or conversion of a residential structure would impact fishing related activities. A potential disadvantage to such a shift in policy is that it might make it more cumbersome and slower to obtain permits, even for relatively simple applications. Requiring planning board review may also upset home owners and could overburden the planning board. These potential drawbacks might be mitigated if planning board review is required only for more limited or “targeted” commercial fishing districts as discussed above.

Realtors’ notification. Requiring realtors to notify prospective purchasers within CF zones of the activities, sites, sounds, smells, etc. they can expect when moving to a working waterfront would help reduce the potential for conflicts and complaints between fishermen and new residents. Such a policy would ensure that potential buyers are informed. This would make it difficult for a person to claim they did not know what to expect before moving in to a fishing village and may give a greater level of protection to fishermen against complaints and perhaps against any nuisance law suits. One problem with a requirement for realtor notifications is that enforcement could be burdensome on the Town. Also it would create an administrative burden on realtors and would require them to provide information which is generally against their interest to provide.

“Right to fish” ordinance. The town could go a step further in protecting fisherman from legal and political efforts to do away with aspects of commercial fishing that some people may find offensive. The town could pass an ordinance that sends a message to the community that fishing, and its attendant smells, noise, early hours of activity, lights, or other inconveniences is an accepted and permissible practice in the commercial fishing districts. While the town can not create a “right” to fish, a strong policy declaring fishing related activities as allowed uses and activities would certainly help support a presumption in favor of commercial fishing in any legal action seeking to limit fishing related activities or in any political effort to pass an ordinance that might have the effect of limiting fishing related activities. The risk of passing such an ordinance is that it might alienate residents who view it as unfairly favorable to the fishing industry. Also, it could be difficult to enforce.

Develop a scenic resource inventory and/or scenic protection criteria.* Some communities concerned with protecting scenic views, such as *Camden*, develop regulations that provide some protection for the scenery and views of that community. The first step to protecting scenic resources is to conduct an inventory of those resources. Often this information alone will be used by the community and by developers to design and locate development in such a way as to minimize impacts to those resources and to meet the desires of the community for scenic protection. If greater protection is desired and warranted, the community could enact scenic protection criteria that have some regulatory control of the design and location of development. There are many examples of scenic protection guidelines that could serve as a model and they can be made as flexible or strict as the community desires. However, like design guidelines, scenic resource regulations control aesthetic choices and many communities find it difficult to justify the burden these may impose on property owners.

* Could be regulatory or non-regulatory

Public Participation and Feedback

An important component of the Cundy's Harbor working waterfront study was the volunteer advisory group made up of Cundy's Harbor citizens that guided the study. This advisory group, which included Yvette Alexander, Bernice Kenney, Elsa Metz, Howard Nannen, Linda Prybylo and Burr Taylor, worked with the residents and users of Cundy's Harbor, along with the planning consultants and the town planner, to develop the village profile and the options for protecting Cundy's Harbor. The advisory group generated many of the ideas that form the basis for this report, provided invaluable local knowledge, and guided the direction of the study. They also helped identify and speak to fishermen, residents and business owners who could discuss the issues and challenges affecting the Cundy's Harbor's working waterfront.

More than a dozen people were contacted to collect information on critical marine infrastructure, the boundaries of Cundy's Harbor, and how they felt the town was helping to protect and promote the fishing community. Most of the people interviewed willingly shared their knowledge and their perceptions about the challenges and threats facing the working waterfront. Their input was essential to determining the critical needs of the fishing industry and marine related businesses in the village.

The third, and broadest, component of public participation was a public forum held on September 27, 2004 at the Cundy's Harbor community building. Over three dozen residents participated, including fishermen and business owners. The citizens were presented with an overview of the inventory and the options for protecting the working waterfront. The attendees then broke into four groups for further discussion and feedback, with a member of the advisory group facilitating each group. The participants were asked to answer whether the town should attempt to protect Cundy's Harbor working waterfront; what are the top issues the town should try to address; and which options should be considered. (A copy of the Worksheet for Discussion and Feedback is included in the appendix.) Their answers and feedback were recorded and briefly reported back to the whole group at the end of the evening. The notes were collected, incorporated into this report, and form the basis for many of the recommendations for promoting and protecting Cundy's Harbor working waterfront.

The participants generated very similar conclusions and recommendations. All four groups felt strongly that the town should attempt to protect Cundy's Harbor working waterfront and plan for future threats to the working waterfront. Each group endorsed the concept of preserving the character of the village. Although time did not allow for deeper inquiry into what people meant by "character" it was clear that most participants wanted Cundy's Harbor to remain as it is to the greatest extent possible and are supportive of retaining a viable commercial fishing industry in Cundy's Harbor.

All four groups were concerned about the potential for conflicts between commercial fishermen and village residents, particularly new residents. They supported the idea of developing a brochure that describes the culture, the activities and the sensory experiences

(including those that may be offensive to people) of a true working waterfront. The brochure would also include the message, perhaps implied, that if you buy real estate in Cundy's Harbor, you should be prepared to live with the existing conditions of the working waterfront.

Three of the groups felt the town should consider improved or additional public access to the water, perhaps including a public wharf in Cundy's Harbor, but felt there needs to be much more discussion concerning this. Likewise, many of the participants recommended looking for funding sources for waterfront infrastructure improvements (potentially including access, parking, harbor facilities, pump out stations, etc.) There was also fairly broad agreement that the issue of property tax relief for waterfront properties should be addressed. Most people favored moving toward assessment based on the current use of the property. Finally, there was general agreement, though not unanimous, that the zoning ordinances should be reviewed in greater detail to make sure they are achieving the town's goals for the working waterfront.



Cundy's Harbor from Library, Fall 2004

Conclusion

Findings

Cundy's Harbor has a strong commercial fishing culture and strong public support for maintaining that culture and preserving the infrastructure that supports commercial fishing. Cundy's Harbor has been able to maintain its working waterfront and sustain its commercial fishing industry with relatively little recent change. Many of the concerns of working waterfront communities elsewhere are not urgent matters in Cundy's Harbor. But it would be unwise to ignore the influences and pressures at work on coastal communities throughout Maine and New England. The relatively moderate and manageable change in Cundy's Harbor is not necessarily an indicator that issues such as loss of access or conflict between fisherman and residents will not become a problem in Cundy's Harbor as they have in so many other working waterfronts.

But Cundy's Harbor has options open to it that may help to ensure the continued vitality of the working waterfront. This report lists many of these options. It is important to note, however, that most of the options involve tradeoffs that require the community to make decisions about what it values and what it wants to be in the future. The community expressed support for considering many of the options and for engaging in the discussion necessary to plan for the future.

We found that marine infrastructure needs in Cundy's Harbor are minimal but could be enhanced to promote and protect the fishing industry. While most people considered water access to be the most important factor in sustaining the fishing industry, we found that Cundy's Harbor has experienced remarkably little loss of water access over the last decade. Despite this relatively modest loss of access, the residents and users of Cundy's Harbor are very concerned about future loss of access as the demographics of Cundy's Harbor change. Coastal properties are in high demand in Harpswell and in other Maine coastal communities resulting in dramatic increases in the value of coastal properties in recent years. The pressure created by increased demand for recreational boating facilities is significant. The future of Holbrook's, one of the larger commercial wharves, is uncertain.

Residents of Cundy's Harbor expressed mixed opinions concerning the need and desire for additional public water access sites or a public wharf in the village. Additional public access would likely encourage additional recreational boating, something seen by many as anathema to commercial fishing. Also, public access for commercial fishing might be perceived as unfair to owners of private docks and wharves.

We found that available land for parking is limited throughout Cundy's Harbor and parking is likely to continue to be in high demand. We also found there is an adequate supply of basic marine related goods and services but that many people are concerned about maintaining current levels of supplies and services.

The current land use regulations make the fishing industry an exclusive use on most of Cundy's Harbor's waterfront. While this zoning generally has been successful in promoting and protecting the fishing industry, we identified several aspects of the regulations that might

be made more effective without imposing substantial new burdens on residents and property owners. Residents of Cundy's Harbor seem to prefer to keep regulations to a minimum but they also would like the village to stay, as much as possible, as it is now. For instance, changes in ownership of properties may lead to alterations that are out of character with the current village and may eventually pose a threat to the continued vitality of the working waterfront. So residents of Cundy's Harbor seemed to generally favor stricter land use regulations to stem the potential for future large-scale changes in the culture and built environment of the village. Moreover, to the extent commercial fishing operations may be in conflict with residential or other uses, people felt that the residents and users of Cundy's Harbor should defer to the fishing industry needs.

We also found that much of the challenge to Cundy's Harbor's working waterfront comes from influences that are beyond the control of the town and its policies. Factors such as federal regulation, market conditions for seafood and for coastal property, and environmental conditions will continue to be key determinants to the future of Cundy's Harbor. Nevertheless, local efforts to preserve the working waterfront play a vital role and generally enjoy broad community support.

Recommendations

Based on the information gathered for this study and particularly the feedback from people interviewed and people in attendance at the community forum, we recommend the community take the following actions.

Immediate actions:

- Include stronger working waterfront policies and strategies in the town's comprehensive plan update.
- Educate the community, both seasonal and year round, on the importance and facts of living in a fishing environment. Use a brochure to achieve this purpose, and request or require that real estate agents give this to prospective buyers viewing homes and land in Cundy's Harbor (a sample brochure is in the appendix). An educational brochure could inform newcomers and seasonal residents of the realities of living in a fishing village.
- Review assessment methodology in Harpswell to ensure that small unbuildable and highly restricted waterfront lots are assessed appropriately.
- Disseminate this report to the residents and users of Cundy's Harbor.

Longer-term actions:

- Institute the goal of working to preserve and protect the working waterfront.
- Select some of the promising land use options (such as more restrictive bulk and lot coverage standards for new and expanded residential in CF zones, combined with more targeted drawing of those zones) and further analyze the benefits and impacts (pros and cons) and engage the community to decide which, if any, to implement.

- Work with other coastal communities to convince the legislature to amend state laws so that coastal marine related property is assessed at current use value.
- Review the current land use regulations to determine if they should be amended to include protection of scenic views and if the current zoning boundaries for the commercial fisheries districts are accurate and adequate.
- Engage in discussion about the need and desire for improved or additional public access.
- Form a committee to review the desire and need for a dedicated commercial fisheries fund to be used for investments in the waterfront including purchase of land for access if desired.
- Form a committee to review the future potential uses of Holbrook's. Consider the possibility of the Town acquiring the property to ensure public access and other benefits.



Cundy's Harbor and Cundy's Harbor Wharf, Summer 2004

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Appendix

- A. **Maps** of Cundy's Harbor village and current land and marine-related uses
- B. **Digital photographs** of marine-related uses, water access sites, and water access opportunity sites in the village
- C. **Spreadsheets containing data** of Cundy's Harbor village and current land and marine-related uses
- D. **Brochure** from Jonesport
- E. **Worksheet** from Community Forum